

STATE OF MAINE
SUPREME JUDICIAL COURT

DOCKET NO. BAR-04-04

BOARD OF OVERSEERS OF THE BAR)
Plaintiff)

ORDER OF DISBARMENT

RICHARD G. CERVIZZI)
of Scarborough, ME)
Me. Bar #1607)
Defendant)

This matter is before the Court pursuant to M. Bar R. 7.2(b)(1) on a disciplinary information filed by the Board of Overseers of the Bar, seeking the disbarment of Richard G. Cervizzi. The matter was heard on March 31, 2005. Although notified of the hearing, Mr. Cervizzi failed to appear, instead sending a letter indicating that he did not contest disbarment. Bar counsel was present and presented testimony by six witnesses. Fifty exhibits were offered and admitted.

Based on the record of testimony, exhibits and the information and other pleadings filed in this matter, the Court makes the following findings regarding procedures and Mr. Cervizzi's default:

- (1) On December 20, 2004, Mr. Cervizzi's spouse was properly served by a deputy sheriff at their residence in Scarborough, Maine with copies of the information, a notice directing Mr. Cervizzi to file an answer within 20 days of service and the Board's Motions for Default and Contempt. Such service upon Mrs. Cervizzi constituted service upon Defendant

Cervizzi himself. M.R. Civ. P. 4(d)(1). At the direction of Bar Counsel, on January 7, 2005, Mr. Cervizzi was served in-hand by private detective, Ronald J. Randall, with duplicate copies of those same documents. Service was accomplished at Mr. Cervizzi's employment, Lee Auto Sales in Windham.

- (2) Mr. Cervizzi did respond to the Board's Motion for Contempt by cooperating with the Board on January 19, 2005 in the removal of his former clients' files from his residence, pursuant to the Court's Order of January 14, 2005.
- (3) Mr. Cervizzi did not respond to the information filed by the Board of Overseers or a subsequent motion for default.
- (4) Because Mr. Cervizzi did not respond to the Board's information or oppose the motion for default, he is defaulted. The facts and allegations of that information are deemed admitted. M. Bar R. 7.2(b)(2), M.R. Civ. P. 7(c)(3), 55.
- (5) Mr. Cervizzi was provided notice of this hearing by the Court's letter of March 10, 2005, and also had several telephone discussions with Board staff between March 18th and March 29th confirming his knowledge of the hearing date.

- (6) By his hand-delivered letter to the Court dated March 30, 2005, Mr. Cervizzi stated that he did not oppose the sanction of disbarment being sought by the Board. He failed to appear at the hearing. Mr. Cervizzi did notify Bar Counsel that he would not be present.

Based upon the allegations admitted by default and the testimony of six witnesses presented by Bar Counsel at hearing, the Court finds the following facts regarding misconduct by Mr. Cervizzi:

- (7) Mr. Cervizzi practiced law in Maine from 1970 until July/August 2003.
- (8) Upon receiving notice in early July, 2003 that he had been summarily suspended from practice by the Board, effective July 30, 2003, for his failure to comply with his tax obligations, Mr. Cervizzi failed to inform his clients, courts, opposing counsel or other required individuals or agencies of that suspension.
- (9) Mr. Cervizzi failed to assist many of his clients to obtain new counsel, and abandoned most of his clients and the legal matters they had entrusted to him. A number of his clients were left with no idea where their lawyer was, that in fact he was no longer acting as their lawyer, where to find him or their files, or in what status their legal affairs had been left.

- (10) While Mr. Cervizzi did respond to two initial grievance inquiries from Bar Counsel, thereafter he repeatedly ignored the Board's and Bar Counsel's efforts to contact him about grievances filed against him and the whereabouts of clients' files.
- (11) In at least two matters, he continued to represent clients in court after July 30, 2003, in direct violation of his suspension notice.
- (12) In one of those matters, a pending criminal case, Mr. Cervizzi signed a document on August 7, 2003 that was dated July 31, 2003. He then filed that document with the Biddeford District Court for his client's case, making it appear that he had signed it before he had been suspended from practice.
- (13) By his unsigned letter of September 12, 2003 from Cervizzi's Title Company, he admitted that he was obligated to disburse fees and charges totaling \$990.00 to a mortgage broker, NovaStar Home Mortgage, Inc., concerning a loan transaction for which Mr. Cervizzi had acted as the settlement agent. To date, there is no evidence that he has made that payment to NovaStar.¹

¹ Suggested amendments by Mr. Cervizzi to Bar Counsel's draft disbarment order include a suggestion by Mr. Cervizzi that the \$990 has been paid to NovaStar. That allegation, not subject to examination, is insufficient to overcome the defaulted finding of non-payment.

(14) Mr. Cervizzi initially failed to comply with this Court's Order for Custody of Files issued on April 28, 2004 requiring him to turn his former clients' files over to Bar Counsel by May 7, 2004. It was not until some eight months later – on January 19, 2005 – after the Board's agent, Mr. Randall, had directly confronted him about the seriousness of his failure to turn over those files to Bar Counsel, that Mr. Cervizzi finally complied with that April 28, 2004 Order for Custody of Files.

(15) Mr. Cervizzi abandoned each of the four clients who testified at hearing, refused to respond to inquiries by each of the four, and refused to return files and wills to his clients, so that they could pursue their pending legal matters through alternate counsel.

(16) Mr. Cervizzi lost all or parts of files of some clients.

(17) Clients received files only after they were removed from Mr. Cervizzi's home by court order and transferred to the custody of the Board and a law office in Saco.

(18) The Court incorporates by reference as findings all of the allegations in the information that have been admitted by default.

CONCLUSIONS

Based on these findings, the Court concludes that Richard G. Cervizzi has violated numerous Bar Rules. Specifically,

1. By failure to comply with Bar Rules and court orders and failure to respond to inquiries by the Board and Bar Counsel, he has violated M. Bar. R. 2(c), engaged in conduct unworthy of an attorney pursuant to M. Bar. R. 3.1(a), and violated M. Bar R. 3.2(f)(1), (2), (3), (4).
2. By practicing law and filing court documents after his suspension, he has violated M. Bar. R. 3.2(f)(1), (3), (4), and 7.3(i)(1)(B), (C).
3. By refusing to return files to clients after ceasing practice and representation and by failing to act promptly to provide the files after request by Bar Counsel and order of the Court, he has violated M. Bar R. 3.4(a)(4).
4. By abandoning his clients, neglecting legal matters entrusted to him, and refusing or delaying requests to return files he has violated M. Bar. R. 3.6(a) and 3.6(a)(3).
5. By representing clients after being suspended, he has violated M. Bar R. 2(c); 3.1(a); 3.7(b), and 7.3(i)(1)(B), (C).
6. By failing to notify clients after his suspension for disciplinary purposes, he has violated M. Bar R. 7.3(i)(1)(B), (C).

The violation of these provisions of the Bar Rules are numerous and serious, affecting many clients and the integrity of the disciplinary process. Mr. Cervizzi

has not suggested any justification or mitigating circumstances for his action. He has indicated no remorse for the harm he has caused to his former clients.

Protection of the public is the primary purpose of the attorney discipline system. With that purpose and no indication of any mitigating circumstances, the numerous and serious violations of the Bar Rules require that the sanction of disbarment be imposed as the only appropriate sanction in the circumstances.

ORDER

It is hereby ORDERED that Richard G. Cervizzi be, and he hereby is disbarred from the practice of law in the State of Maine effective the date of this order. Mr. Cervizzi may not seek reinstatement to practice law in Maine until at least five (5) years from the date of this order, and may do so then only if he first makes the following payments:

1. Restitution payments of \$990.00 to NovaStar Home Mortgage, Inc. of Santa Ana, California, and \$600 to Valerie L'Heureux for jury trial payments on cases that were abandoned;
2. \$2212.55 to the Board of Overseers of the Bar (for its expenses incurred for the removal of former clients' files from his residence, and providing notice of that removal).

Dated: April 4, 2005

_____/s/_____
Donald G. Alexander
Associate Justice